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IN THE
COURT OF APPEALS OF INDIANA

OTHA L. GILES, JR.,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 02A05-0612-CR-692
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE ALLEN COUNTY SUPERIOR COURT
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0604-FD-342

April 18, 2007

MEMORANDUM OPINION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Otha L. Giles, Jr., appeals his conviction for Residential Entry,[1] a class D felony. Specifically, Giles argues that there is insufficient evidence supporting his conviction. Finding no error, we affirm the judgment of the trial court.

FACTS

On December 9, 2005, Jason Vaughn and two friends, Renee and Rachel, played cards in his Fort Wayne apartment. Renee telephoned Giles and arranged for him to join the group at the apartment. Vaughn had never met Giles before that evening. Giles arrived at the apartment a short time after receiving the phone call from Renee. Rachel left shortly after Giles arrived and, approximately one hour later, Renee prepared to leave. Vaughn left with Renee so that he could walk her to her car. He requested Giles to leave as well because Vaughn was uncomfortable leaving a stranger alone in his apartment. Vaughn closed and locked his apartment door after he, Renee, and Giles exited. Vaughn and Renee then walked towards Renee's car and Giles walked in another direction.

Upon reentering his apartment building, Vaughn heard loud noises. As he entered the hallway leading to his apartment, he observed Giles making the final kick necessary to break open the door to Vaughn's apartment. Vaughn then asked Giles, "What the f*ck are you doing?" Tr. p. 164. After telling Giles that he was going to call the police, Vaughn entered his apartment to get the phone. Giles entered behind him, grabbed the phone out of his hand, ripped the phone cord from the wall, and pushed Vaughn.

[1] Ind. Code § 35-42-2-1.5.

On April 24, 2006, the State charged Giles with residential entry and interference with the reporting of a crime. On September 12, 2006, a jury found Giles guilty as charged.[2] On October 2, 2006, the trial court sentenced Giles to two years of incarceration. Giles now appeals.

DISCUSSION AND DECISION

Giles argues that the State presented insufficient evidence to support his conviction for residential entry. As we consider this argument, we observe that when reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995). Instead, we examine the evidence and all reasonable inferences that may be drawn therefrom in support of the verdict. Id. We will affirm the conviction if evidence of probative value exists from which the factfinder could have found the defendant guilty beyond a reasonable doubt. Id. More specifically, we will affirm unless no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

To convict Giles of class D felony residential entry, the State was required to prove that he knowingly or intentionally broke and entered Vaughn's apartment. I.C. § 35-43-2-1.5. Giles argues that he believed he had Vaughn's consent to enter the apartment. Consent is a defense to the crime of residential entry, but to avail himself of

[2] Giles does not appeal from his conviction for interference with the reporting of a crime.

that defense, a defendant must establish that he had a reasonable belief that he had permission to enter. McKinney v. State, 653 N.E.2d 115, 118 (Ind. Ct. App. 1995).

Here, the record establishes that Vaughn ensured that Giles left the apartment with Vaughn and Renee because Vaughn did not want a stranger alone in his apartment. Tr. p. 94. When Vaughn discovered Giles kicking in his door, he asked, "What the f*ck are you doing?" Id. at 164. He then told Giles that he was going to call the police and stepped into his apartment to find a telephone. Giles followed him into the apartment and now emphasizes that Vaughn did not specifically tell him not to enter. But Giles had just kicked in the door to the apartment, followed by vigorous questioning and a threatened phone call to the police from Vaughn. Under these circumstances, it was not reasonable for Giles to believe that he had permission to enter the apartment. Giles directs us to portions of his testimony that contradict Vaughn's version of the incident, but this is merely a request that we reweigh the evidence and judge the credibility of witnesses—a request we decline.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and CRONE, J., concur.